

### REMARKS

Claims 105-135 are pending in the present application and at issue. It is respectfully submitted that the present response presents no new issues or new matter and places this case in condition for allowance. Reconsideration of the application in view of the above amendments and the following remarks is requested.

#### I. The Rejection of Claim 121 under 35 U.S.C. 102 and the Doctrine of Obviousness-Type Double Patenting

Claim 121 rejected under 35 U.S.C. 102(e) as being anticipated by and under the doctrine of obviousness-type double patenting over claims 1-3 of Lassen et al. (U.S. Patent No. 6,060,298). Specifically, the Office stated "there are modified positions which read upon the native *Peniophora* phytase sequence disclosed by Lassen et al. because the modification/substitution is with the same amino acid present in the native sequence, amounting to no modification at all." These rejections are respectfully traversed.

The invention is directed to methods of producing a modified phytase, comprising introducing a substitution selected from the group consisting of 75W,F; 78D,S; 81A,G,Q,E; 82T; 84I,Y,Q,V; 116S; 119E; and 120L. A substitution is a change of an amino acid with a different amino acid. Thus, the invention claimed in claim 121 does not read on the native *Peniophora* phytase sequence.

Lassen et al. also do not disclose methods of modifying a phytase by introducing a substitution recited in claim 121.

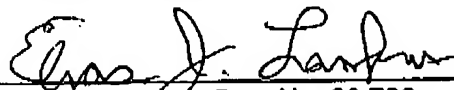
For the foregoing reasons, Applicants submit that the claims overcome these rejections under 35 U.S.C. 102 and the doctrine of obviousness-type double patenting. Applicants respectfully request reconsideration and withdrawal of the rejections.

**II. Conclusion**

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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